IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 719 (SS) OF 2003

Pawan Kumar Pandey,
S/o Shri Ramesh Chandra Pandey,
R/o L.I.G. 269, Avas Vikas Colony,
Rudrapur,
District Udham Singh Nagar, ...Petitioner.

Versus

1. Chief Post Master General State of Uttaranchal, Dehradun.
2. Senior Superintendent Post Department, State of Uttaranchal, Nainital.
3. Joint Divisional Inspector Kashipur, District Udham Singh Nagar.
4. Managing Director,
   Posts and Telegraph Services,
   Sansad Marg,
   New Delhi. .....Respondents.

Dated: 29.03.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Vijay Bhatt, Advocate for the petitioner and Standing Counsel for the Central Government.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the impugned order dated 06.09.2001 and order dated 23.11.2001 passed by the Chief Post Master General, Uttaranchal Circle, Dehradun (Annexures Nos. 11 and 12 to the writ petition).

Briefly stated, according to the case of the petitioner, his father was posted as Post Master at Head Post Office

Rudrapur, District Udham Singh Nagar. He worked as a regular employee in the Posts and Telegraph Department. He died in harness on 06.01.1999 as mentioned in the death certificate.

As the petitioner was the eldest son of the after the death of his father, he applied within time for appointment according to his qualification on the compassionate ground to the authority concerned. In this regard, an official letter was sent to the mother of the petitioner by the Senior Superintendent of Post Office/respondent no. 2, Nainital mentioning therein the proforma to apply to the Department and required the petitioner to sent his application according to that proforma. Accordingly, the petitioner applied for the said purpose along with affidavit declaring that there is not other source of income or livelihood.

On 28.12.1999, a letter was sent from the office of the Senior Superintendent of Post Offices, Nainital dated 28.12.1999 to the mother of the petitioner stating therein that the disposal of the application of the petitioner along with the objections raised by the department has been sent for disposal to the Joint Divisional Inspector, Kashipur, District – Udham Singh Nagar and he has referred the matter for further proceedings to be done.

On 19.01.2001, another letter was sent to the mother of the petitioner requiring the petitioner to send certain documents in respect of appointment to be given to him on compassionate grounds and he was ordered to submit documents namely acceptance of the mother of the petitioner, qualification certificate of the petitioner, documents of Insurance, death certificate of father of the petitioner and an affidavit. The petitioner completed all the formalities.

The petitioner is graduate from Kumaon University, Govt, P.G. College, Rudrapur, Udham Singh Nagar in the year, 1999.

When no decision was taken for a very long time, petitioner moved a representation before the Senior Superintendent of Post Offices, Nainital, which was recommended and forwarded by the Senior Superintendent of Post Offices, Nainital to the Chief Post Master General, Uttaranchal Region, Dehradun on 23.08.2001 requesting that the decision be taken at the earliest.

On 06.09.2001, an official letter was sent to the mother of the petitioner from the office of Assistant Post Master General, Uttaranchal Circle, Dehradun through Senior Suptd. of Post Offices, Nainital Division, Nainital stating therein that adequate terminal benefits have been paid to the family of the petitioner.

After receiving the aforesaid letter, an application was again given by the petitioner to the respondents praying therein that he and his family have no other source of livelihood and he has a younger brother, who is unemployed and a younger sister, whose marriage has to be solemnized. The petitioner has fulfilled all the requirements and according to him, he is fully eligible for being appointed on compassionate ground under the Dying in Harness Rules.

On 23.11.2001, an order was passed by the Chief Post Master General, Uttaranchal Circle, Dehradun rejecting the application of the petitioner for appointment on compassionate ground on the ground that the petitioner is not eligible.

The mother of the petitioner contacted the respondents personally and prayed a number of times to consider the precarious condition of her family and stated that there is no

other source of livelihood and after the sudden death of her husband, the whole family has come on the verge of starvation.

Thereafter, the petitioner filed number of representations (dated 04.04.2003 and 02.05.2003) to the Chief Post Master General, Dehradun and Managing Director, Posts & Telegraph Department, New Delhi.

Counsel for the petitioner has shown an advertisement No. Rectt/1-6/DR/PA/03 dated 9 December, 2005 published by Chief Postmaster General Uttaranchal Circle, Dehradun inviting applications for a total posts of 58, 12 for Postal Assistants for Post Offices and 46 posts of Postal Assistants in Army Postal Services.

A counter affidavit has been filed by Mr. Govind Singh Bisth, Advocate for the Central Government, where it has been admitted that the condition of the family of the petitioner is very precarious. Relevant paragraphs of the counter affidavit are quoted below:-

"18. That the contents of para 18 of the petition is admitted as far as official record is concerned. However, no comment is required regarding thue precariouis condition of the family of the petitioner but it is pertinent to mention here that the case of the petitioner for compassionate appointment was rejected after considering it by the Committee on the grounds of adequate terminal benefits paid, limited liability and the family of the petitioner was not considered in indigent condition.

19. That, in reply to the contents of para 19 to 25 of the petition, it is submitted that under the provisions of instructions issued by the Govt. of India, each and every case of compassionate appointment has to be adjudged as per circumstances of thue case. The compassionate appointmenst should not be more than 5% of the vacancies falling under

direct recruitment quota. The Supreme Court has ruled in the cases of Himachal Road Transport Corporation Vs. Dinesh Kumar (JT 1996(5) SC 319) on May 7, 1996 and Hindustan Aeronautics Limited Vs. Sm.t A Radhika Thirumalai (JT 1996 (9) SC 197) on October 9, 1996 that appointment on compassionate grounds can be made only if a vacancy is available for that purpose. The rules provide for compassionate appointment to Group 'C' and 'D' posts against Direct Recruitment Vacancies, and compassionate appointment is to be made available to families who are in indigent circumstances and deserves immediate assistance and relief from immediate financial destitution. It is also pertinent to mention that the Planning Commission has brought out that the poverty line amounts to income below Rs. 17767-20 P.M. for a family of 5 members. Hence this yardstick of Poverty Line has to be applied to decide whether or not the case is really a deserving one. The pending cases are to be decided on this basis and no waiting list is to be maintained.

20. That, the contents of para 26 of the writ petition are not admitted there has been no violation of any of the fundamental rights of the petitioner under Article 14, 16 & 21 of the Constitution. The case was considered in the light of provisions contained in Para 8 DOP&T OM No. 14014/6/94-Estt(d) dated 9th Oct. 1998 and the Supreme Court judgment dated May 4, 1994 in the case of Umesh Kumar Nagpal Vs. State of Haryana and others (JT 1994 (3) S.C.525) that the whole object of granting Compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. Compassionate Appointment can not be granted after lapse of a reasonable period and it is

not a vested right, which can be exercised at any time in future."

A perusal of the record shows that the petitioner has moved applications/representations for appointment on compassionate ground well within time after the death of his father and under the 5% quota of compassionate appointment, he is fully eligible for being given appointment.

Since the father of the petitioner expired in the year, 1999, it is desirable in the interest of justice that the matter of compassionate appointment should have been considered without any delay in view of the Judgment of ***Smt. Sushma Gosai and others Vs. Union of India and others, 1989 (4) SCC 468.***

In the case of ***Smt. Sushma Gosai and others Vs. Union of India and others, 1989 (4) SCC 468***, the Apex Court has held as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent no. 2 to appoint Sushma Gosain appellant in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today."

It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

In view of the above, a writ of certiorari is issued quashing the order dated 06.09.2001 and the order dated 23.11.2001.

Authority concerned is directed to consider the case of the petitioner within a period of two months from the date of presentation of the certified copy of the order.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

29.03.2006
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